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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 SEAN E. COOTS,

Case No. 3:19-cv-00689-LRH-CLB

6 Petitioner,

7 v.

ORDER

8 ISIDRO BACA, et al.,

9 Respondents.

10 This habeas matter comes before the Court for consideration of *pro se* Petitioner Sean E.
11 Coots's Application to Proceed *In Forma Pauperis* (ECF No. 1) and Motion for Appointment of
12 Counsel (ECF No. 1-2), and for preliminary review pursuant to Rule 4 of the Rules Governing
13 Section 2254 Cases.¹ For the reasons discussed below, the Court denies the pauper application and
14 motion for counsel and directs Coots to pay the filing fee and amend his petition within 30 days.

15 **I. IFP APPLICATION**

16 Pursuant to 28 U.S.C. § 1915 and LSR 1-1 of the Local Rules of Practice, any person who
17 is unable to prepay the fees in a civil case may request permission to proceed *in forma pauperis*
18 ("IFP"). Indigent prisoners who do not have the money to pay the five dollar (\$5.00) filing fee for
19 a § 2254 habeas petition may apply for IFP status. A prisoner's IFP application must be submitted
20 on the form provided by the court and include specific financial documents. 28 U.S.C. § 1915;
21 LSR 1-1, LSR 1-2.

22 After considering the IFP application, the Court finds that Coots is able to pay the \$5 filing
23 fee. In particular, the Court notes that Coots's financial certificate states that he has a current
24 balance of \$501.00 in his inmate trust account and he receives average monthly deposits of
25 \$283.33. (ECF No. 1 at 4.) The IFP application will therefore be denied. Coots will have 30 days

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27 ¹ All references to a "Habeas Rule" or the "Habeas Rules" in this order identify the Rules
28 Governing Section 2254 Cases in the United States District Courts.

1 from the date of this order to have the \$5 filing fee sent to the Clerk of Court.

2 **II. MOTION FOR APPOINTMENT OF COUNSEL**

3 Coots seeks the appointment of counsel to assist him in this habeas proceedings. There is
4 no constitutional right to appointed counsel in a federal habeas corpus proceeding. *Luna v. Kernan*,
5 784 F.3d 640, 642 (9th Cir. 2015) (citing *Lawrence v. Florida*, 549 U.S. 327, 336–37 (2007)).
6 However, an indigent petitioner seeking relief under 28 U.S.C. § 2254 may request the
7 appointment of counsel to pursue that relief.² 18 U.S.C. § 3006A(a)(2)(B). The court has discretion
8 to appoint counsel when the interests of justice so require. 18 U.S.C. § 3006A(a)(2). The interests
9 of justice so require “when the complexities of the case are such that denial of counsel would
10 amount to a denial of due process.” *Brown v. United States*, 623 F.2d 54, 61 (9th Cir. 1980). In the
11 absence of such circumstances, a request for counsel in a § 2254 proceeding is addressed to the
12 sound discretion of the district court. *Id.* (citing *Dillon v. United States*, 307 F.2d 445, 447 (9th
13 Cir. 1962)). When a habeas petitioner has a good understanding of the issues and the ability to
14 present forcefully and coherently his contentions, no attorney is legally required. *LaMere v. Risley*,
15 827 F.2d 622, 626 (9th Cir. 1987).

16 Coots’s motion, submitted on a prison form, argues that the complexities of the issues in
17 relation to his lengthy sentence implicate a need for counsel to promote fairness and justice. (ECF
18 No. 1-2.) He asserts that he is unable to afford counsel and his incarceration will impede his ability
19 to pursue his habeas claims. Counsel would assist Coots in presenting substantive and procedural
20 issues and ease the Court’s task of discerning the issues.

21 Here, Coots has not established that the interests of justice require the appointment of
22 counsel. Based on the state appellate record and the petition, the Court finds that the facts alleged
23 and legal issues raised are not especially complex. Since commencing this habeas action, Coots
24 has submitted multiple filings and a 72-page petition, demonstrating sufficient ability to write and
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26 ² An “indigent” petitioner is a person “who is too poor to hire a lawyer and who, upon indictment,
27 becomes eligible to receive aid from a court-appointed attorney and a waiver of court costs.”
28 Black’s Law Dictionary (10th ed. 2014).

1 articulate his claims. Although Coots’s lengthy sentence might weigh in favor of counsel, he has
2 not substantiated the bare allegation that the substantive and procedural issues in this case are too
3 complex for his comprehension and abilities. As to investigation or discovery, the Court’s review
4 of a 28 U.S.C. § 2254 petition is generally limited to the record that was before the state courts.
5 *Cullen v. Pinholster*, 563 U.S. 170, 181–82 (2011). At this juncture the Court cannot determine
6 whether circumstances exist in this case that would nonetheless justify a grant of discovery, and
7 the Court will not appoint counsel based on a speculative possibility of discovery. Coots has not
8 shown that denial of counsel would violate due process, and the motion is denied.

9 **III. AMENDING THE PETITION**

10 Coots has not filed his petition on the appropriate form or in substantial compliance with
11 the form. The Habeas Rules require that a petition: (1) specify all the grounds for relief available
12 to the petitioner, (2) state the facts supporting each ground, (3) state the relief requested, (4) be
13 printed, typewritten, or legibly handwritten, and (5) be signed under penalty of perjury by the
14 petitioner. Habeas Rule 2(c). To comply with this rule, a petitioner must state specific
15 particularized facts that entitle him to habeas relief for each ground alleged. *Mayle v. Felix*, 545
16 U.S. 644, 649 (2005). The facts alleged must provide sufficient detail to enable the court to
17 determine, from the face of the petition alone, whether the petition should proceed. *Adams v.*
18 *Armontrout*, 897 F.2d 332, 334 (8th Cir. 1990). However, “a habeas petition should not resemble
19 a treatise. Effective writing is concise writing.” *Spaziano v. Singletary*, 36 F.3d 1028, 1031 n.2
20 (11th Cir. 1994) (noting that a 376-page habeas petition did not comply with Habeas Rule 2(c)
21 because of its “prolixity,” *i.e.*, use of more words than necessary to express a thought).³

22 Additionally, *pro se* petitioners are required to submit their petition on the court’s approved
23 form or substantially follow the model form provided in the appendix of forms to the Habeas Rules.

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25 ³ Cf. *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1058 (9th Cir. 2011)
26 (“[W]e have never held—and we know of no authority supporting the proposition—that a pleading
27 may be of unlimited length and opacity. Our cases instruct otherwise.”); *McHenry v. Renne*, 84
28 F.3d 1172, 1179–80 (9th Cir. 1996) (recognizing that unduly long and confusing pleadings
“impose unfair burdens on litigants and judges”).

1 LSR 3-1; Habeas Rule 2(d). The form is important as it provides the Court with necessary
2 information to conduct preliminary review of the petition.

3 Here, Coots's 72-page petition contains excessive legal and factual arguments and does not
4 provide a statement of exhaustion for each claim. Accordingly, Coots must, within 30 days of the
5 date of this order, file an amended petition on the Court's form.⁴ The Court will defer screening
6 until Coots has fully complied with this order.

7 If Coots chooses to file an amended petition, he is advised to carefully follow the
8 instructions on the form. The amended petition should set forth the claims in short and plain terms,
9 simply, concisely, and directly. This means Coots should avoid lengthy legal and factual argument
10 as well as excessive citations to case law. Instead, he should summarize the information he believes
11 to be relevant in his own words for each claim asserted. Exhibits are not a substitute for a proper
12 petition. Coots should specifically identify what constitutional right he believes was violated for
13 each claim.

14 Additionally, Coots is informed that he cannot refer to a prior pleading (*i.e.*, the original
15 petition) in order to make an amended petition complete. *See* LR 15-1(a); *Ramirez v. County of*
16 *San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) (an amended pleading generally supersedes
17 the original). Therefore, an amended petition must re-allege all claims for relief. Any claims that
18 Coots does not re-allege will be waived. *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

19 **IT THEREFORE IS ORDERED:**

- 20 1. Petitioner Sean E. Coots' Application to Proceed *In Forma Pauperis* (ECF No. 1) and
21 Motion for Appointment of Counsel (ECF No. 1-2) are DENIED.
22 2. The Clerk of Court is directed to mail Coots *two* copies of (i) this order, and (ii) the
23 form petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, along with
24 instructions.

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26 ⁴ Coots at all times remains responsible for calculating the applicable statute of limitations. In
27 ordering petitioner to amend his petition, the Court makes no finding or representation that either
28 the original or amended petition will be considered timely.

3. Within 30 days of the date of this order, Coots must:

DATED this 21st day of November, 2019.